

Before the

Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	File No. EB-09-SE-242
	)	NAL/Acct. No. 201032100026
Phonejammer.com	)	FRN # 0019731959
	)	

## NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 20, 2010

Released: April 20, 2010

By the Chief, Enforcement Bureau:

### I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Phonejammer.com (“Phonejammer”) apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803 of the Commission’s Rules (“Rules”).<sup>2</sup> The noted apparent violations involve the marketing in the United States of radio frequency devices designed to intentionally interfere with licensed cellular and Personal Communications Services (“PCS”).

### II. BACKGROUND

2. On May 22, 2008, the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau (“Bureau”) issued a Citation<sup>3</sup> to Phonejammer pursuant to Section 503(b)(5) of the Act.<sup>4</sup> The Citation cited Phonejammer for marketing<sup>5</sup> in the United States radio frequency devices designed to intentionally interfere with cellular and “PCS” frequencies (“phone jammers”) in violation of Section 302(b) of the Act and Section 2.803 of the Rules. In the Citation, the Division determined that there was sufficient evidence on Phonejammer’s website<sup>6</sup> of marketing phone jammers in the United States to

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803.

<sup>3</sup> See *Phonejammer.com*, Citation, 23 FCC Rcd 8264 (Enf. Bur., Spectrum Enf. Div. 2008) (“Phonejammer Citation”).

<sup>4</sup> See 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority to assess a forfeiture penalty against any person who does not hold a license, permit, certificate, or other authorization issued by the Commission, or an applicant for any of those listed instrumentalities, so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person’s place of residence; and (C) subsequently engages in conduct of the type described in the citation).

<sup>5</sup> “Marketing” is defined in Section 2.803(e)(4), 47 C.F.R. § 2.803(e)(4), as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”

<sup>6</sup> See [www.phonejammer.com](http://www.phonejammer.com) (last accessed April 2, 2010).

overcome Phonejammer's denial of such marketing.<sup>7</sup> Specifically, Division staff had observed on Phonejammer's website the marketing of phone jammers, the pricing of phone jammers with United States currency, the listing of the United States as the default shipping location, and the listing of testimonials of United States citizens regarding phone jammers that they had purchased from Phonejammer.<sup>8</sup> The Citation explicitly warned Phonejammer that future violations of the Act and Rules relating to any matter raised in the Citation may result in monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation, in accordance with the statutory limits then in effect.<sup>9</sup> The Citation also gave Phonejammer 30 days to respond to the Citation through a personal interview at the nearest Commission Field Office or a written statement. Phonejammer did not request a personal interview or submit a written statement in response to the Citation.

3. On November 9, 2009, the Bureau's Dallas, Texas Field Office ("Dallas Field Office") received a complaint from a provider regarding interference to its authorized cellular and PCS frequencies in the 800 MHz and 1900 MHz bands. The complainant indicated that it had traced the interference to a business located in Carrollton, Texas. During the course of its investigation of the complaint, the Dallas Field Office determined that the interference had been caused by a 5 watt adjustable power jammer identified as Phonejammer model number PJ005 ("Model PJ005"), installed at a Carrollton business.<sup>10</sup> An employee of the Carrollton business admitted to purchasing the Model PJ005 from Phonejammer on April 21, 2009 using Phonejammer's website, "phonejammer.com." The employee subsequently relinquished the Model PJ005 phone jammer to the Dallas Field Office and also provided a copy of an April 21, 2009 invoice sent by e-mail from sales@phonejammer.com for the sale and shipment of Model PJ005. The Phonejammer invoice clearly shows a billing and shipping address in Carrollton, Texas.

4. On February 4, 2010, the Division issued a Letter of Inquiry ("LOI")<sup>11</sup> initiating an investigation into Phonejammer's marketing of phone jammers in the United States. In its March 3, 2010 Response ("Response")<sup>12</sup> to the Division's LOI, Phonejammer, through counsel, acknowledged that www.phonejammer.com is its website, but denied marketing or shipping phone jammers to consumers in the United States.<sup>13</sup> Specifically, Phonejammer claimed that it "does not market to the United States, and has not shipped or distributed units to the United States."<sup>14</sup> Phonejammer also stated that it clearly discloses on its website that its phone jammers are not marketed in the United States, that use of its phone jammers is prohibited by law in the United States, and that its phone jammers are not authorized for use in the United States.<sup>15</sup> Despite being specifically directed to do so,<sup>16</sup> Phonejammer failed to attest to the truth and accuracy of the information contained in its Response under penalty of perjury by providing an

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<sup>7</sup> See Phonejammer Citation, 23 FCC Rcd at 8265.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 8266. See also *infra* note 35. As noted in paragraph 10, this amount subsequently has been raised to \$16,000.

<sup>10</sup> See *Cosmetology Career Center*, Warning of Unauthorized Operation and Interference to Licensed Radio Stations, Document Number W201032500004 (Enf. Bur., Dallas Field Office, November 24, 2009).

<sup>11</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Victor McCormack, Phonejammer.com (February 4, 2010).

<sup>12</sup> See Letter from Harbottle & Lewis LLP, Counsel for Phonejammer.com, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 3, 2010).

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2.

<sup>16</sup> See LOI at 3.

affidavit or other sworn statement signed by an officer of Phonejammer with personal knowledge of the facts stated within the Response.

5. In March 2010, during the course of investigating a complaint from the St. Lucie County, Florida Sheriff's Office ("SLCSO") regarding interference to cellular and PCS frequencies utilized by SLCSO detectives, the Bureau's Tampa, Florida Field Office ("Tampa Field Office") traced the interference to a phone jammer installed at a business located in Port St. Lucie, Florida. The phone jammer was identified as an 8 watt adjustable power jammer, Phonejammer model number PJ006 ("Model PJ006"). The owner of the Port St. Lucie business admitted to purchasing the Model PJ006 from Phonejammer on September 24, 2009 using Phonejammer's website, [www.phonejammer.com](http://www.phonejammer.com). The owner relinquished the Model PJ006 phone jammer to the Tampa Field Office and also provided a copy of his credit card statement showing a charge dated September 25, 2009, for the purchase and shipment of the device from Phonejammer.

### III. DISCUSSION

#### A. Marketing of Phone Jammers in the United States

6. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."<sup>17</sup> Section 2.803(a) of the Rules prohibits the marketing of radio frequency devices in the United States unless the devices are authorized under the appropriate equipment authorization procedure and comply with all applicable administrative, technical, labeling and identification requirements.<sup>18</sup> Ordinarily, intentional radiators<sup>19</sup> must be authorized in accordance with the certification procedures set forth in Section 2.1031 through Section 2.1060 of the Rules<sup>20</sup> prior to marketing in the United States.<sup>21</sup>

7. Section 2.803(g) of the Rules, however, provides in pertinent part:

[R]adio frequency devices that could not be authorized or legally operated under the current rules ... shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.<sup>22</sup>

In addition, Section 333 of the Act prohibits any person from willfully or maliciously interfering with or causing interference to any radio communications of any station licensed or authorized by the Commission.<sup>23</sup> Thus, intentional radiators that cannot legally be operated – because, for example, they interfere with or jam authorized cellular or PCS communications in violation of the requirements set forth in Section 333 of the Act – are not eligible for a grant of equipment certification.

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<sup>17</sup> 47 U.S.C. § 302a(b).

<sup>18</sup> 47 C.F.R. § 2.803(a).

<sup>19</sup> An intentional radiator is defined by Section 15.3(o) of the Rules, 47 C.F.R. § 15.3(o), as "[a] device that intentionally generates and emits radio frequency energy by radiation or induction."

<sup>20</sup> 47 C.F.R. §§ 2.1031-2.1060.

<sup>21</sup> 47 C.F.R. § 15.201(b).

<sup>22</sup> 47 C.F.R. § 2.803(g).

<sup>23</sup> 47 U.S.C. § 333.

8. Notwithstanding Phonejammer's claim that it does not market phone jammers in the United States, and has not shipped or distributed units to the United States, the record before us clearly demonstrates that on at least two occasions within the past year, Phonejammer has sold and shipped phone jammers to individuals in the United States.<sup>24</sup> As noted above, an individual in Carrollton, Texas purchased a Model PJ005 phone jammer via Phonejammer's website on April 21, 2009 and an individual in Port St. Lucie, Florida purchased a Model PJ006 phone jammer via Phonejammer's website on September 24, 2009. Phonejammer shipped both devices to addresses in the United States. In addition, information on Phonejammer's website and an examination of the Model PJ005 and Model PJ006 phone jammers relinquished to the Bureau's Field Offices indicates that these devices are intended to - and do in fact - interfere with licensed communications services.<sup>25</sup> These devices, therefore, are not eligible to receive a grant of certification and may not be marketed in the United States. Moreover, we note that any disclaimers on Phonejammer's website regarding the marketing and use of phone jammers in the United States do not relieve Phonejammer of its obligation to comply with the FCC's requirements concerning the marketing of radio frequency devices in the United States.<sup>26</sup> Accordingly, we conclude that

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<sup>24</sup> We note that although the Citation did not specifically address Phonejammer's behavior as a Section 1.17(a)(2) violation, 47 C.F.R. § 1.17(a)(2), the Citation emphasized that evidence gathered from Phonejammer's website clearly contradicted Phonejammer's claim that it did not market its phone jammers to individuals in the United States. Moreover, the Citation noted that Phonejammer failed to attest to the truth and accuracy of the information in its response. We will issue a separate Citation to Phonejammer warning it that future violations of Section 1.17(a)(2) of the Rules will lead to forfeiture liability.

<sup>25</sup> According to Phonejammer's website, the Model PJ005 phone jammer is compatible with PCS, GSM and CDMA networks and the Model PJ006 is compatible with 3G, UMTS, PCS, GSM, CDMA and TDMA networks. See [www.phonejammer.com](http://www.phonejammer.com) (last accessed April 2, 2010).

<sup>26</sup> See *Ramsey Electronics Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 458, 461 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid); *Gibson Tech Ed., Inc. d/b/a Hobbytron.com*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14438, 14440 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 2915 (Enf. Bur., Spectrum Enf. Div. 2006), *recon. denied*, Memorandum Opinion and Order, 21 FCC Rcd 9642, 9644 (Enf. Bur. 2006) ("*Gibson Tech Ed., Inc.*") (both rejecting attempts to circumvent the prohibition on marketing of unauthorized equipment by requiring the buyer to sign a certification placing sole responsibility for compliance on the buyer).

Phonejammer apparently willfully<sup>27</sup> and repeatedly<sup>28</sup> violated Section 302(b) of the Act and Section 2.803 of the Rules by marketing two models of phone jammers in the United States.<sup>29</sup>

## B. Proposed Forfeiture

9. Under Section 503(b)(1)(B) of the Act<sup>30</sup> and Section 1.80(a)(1) of the Rules,<sup>31</sup> any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>32</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>33</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>34</sup> We conclude under this standard that Phonejammer is apparently liable for forfeiture for its apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803 of the Rules.

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<sup>27</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992) (“*Southern California*”); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 (2007) (forfeiture paid); *San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873 (2006), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd 1040 (2007), *consent decree ordered*, Order and Consent Decree, 26 FCC Rcd 1494 (2010) (“*San Jose*”).

<sup>28</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002) (“*Callais*”); *Southern California*, 6 FCC Rcd at 4388.

<sup>29</sup> We note that Phonejammer offers for sale several other models of phone jammers on its website. Nevertheless, because the direct evidence of sales in this proceeding relates only to the Model PJ005 and PJ006 phone jammers, we are not proposing forfeitures for Phonejammer’s marketing of these other models at this time. If we determine that Phonejammer has sold and shipped other models of phone jammers to the United States, we may propose additional forfeitures against Phonejammer for its marketing of such models in the future.

<sup>30</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>31</sup> 47 C.F.R. § 1.80(a)(1).

<sup>32</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>33</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>34</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (forfeiture paid) (“*SBC Communications*”).

10. Section 503(b)(2)(D) of the Act,<sup>35</sup> and Section 1.80(b)(3) of the Rules,<sup>36</sup> authorizes the Commission to assess against entities, such as Phonejammer – who are not common carriers, broadcast licensees, or cable operators – a maximum forfeiture of \$16,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$112,500 for any single continuing violation. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act<sup>37</sup> directs the Commission to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>38</sup>

11. Section 503(b)(6) of the Act<sup>39</sup> bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL. Section 503(b)(6) of the Act does not, however, bar the Commission from assessing whether Phonejammer’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.<sup>40</sup> Thus, while we may consider Phonejammer’s prior conduct, the forfeiture amount we propose herein relates only to Phonejammer’s marketing in the United States of the two models of phone jammers within the past year.

12. Under the Commission’s *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)<sup>41</sup> and Section 1.80 of the Rules,<sup>42</sup> the base forfeiture amount for each violation involving the marketing of unauthorized equipment is \$7,000. Further, we have found that each instance of marketing of an unauthorized model

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<sup>35</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>36</sup> 47 C.F.R. § 1.80(b)(3). The Commission has amended Section 1.80(b)(3) of the Rules three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for entities who are not common carriers, broadcast licensees, or cable operators from \$11,000/\$97,500 to \$16,000/\$112,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts for entities who are not common carriers, broadcast licensees, or cable operators from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts for entities who are not common carriers, broadcast licensees, or cable operators from \$10,000/\$75,000 to \$11,000/\$87,500). The most recent inflation adjustment took effect September 2, 2008, and applies to violations occurring after that date. *See* 73 Fed. Reg. 44663-5.

<sup>37</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>38</sup> *Id.* *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>39</sup> 47 U.S.C. § 503(b)(6).

<sup>40</sup> *See* 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); *see also, e.g., Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, Memorandum Opinion and Order, 11 FCC 2d 193, 195 (1967).

<sup>41</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>42</sup> 47 C.F.R. § 1.80.

constitutes a separate violation.<sup>43</sup> Consistent with recent precedent,<sup>44</sup> we propose the imposition of a base forfeiture of \$7,000 per model for an aggregate base forfeiture of \$14,000 (\$7,000 base forfeiture multiplied by two models) against Phonejammer for the marketing of two models of phone jammers in the United States in apparent willful and repeated violation of the requirements set forth in Section 302(b) of the Act and Section 2.803 of the Rules.

13. Having considered the statutory factors enumerated above, however, we conclude that a significant upward adjustment is warranted. Phonejammer marketed its two models of phone jammers in the United States despite receiving a previous citation for the same behavior.<sup>45</sup> Such behavior evinces a pattern of intentional non-compliance with and disregard for Section 302(b) of the Act and Section 2.803 of the Rules. Moreover, the two models that Phonejammer sold to buyers in the United States are intended to, and did in fact, interfere with licensed cellular and PCS frequencies, including frequencies used by public safety entities.<sup>46</sup> Given the intentional nature of the violations, the critical safety concerns,

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<sup>43</sup> See, e.g., *San Jose*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd at 2877; *ACR Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 22293, 22302 (2004), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 3698 (2006) (forfeiture paid); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, Order and Consent Decree, 19 FCC Rcd 24509 (2004) (all finding that the marketing of each separate unauthorized model constitutes a separate violation).

<sup>44</sup> See *San Jose*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd at 2877 (proposing \$28,000 base forfeiture amount for four devices); *Pilot Travel Centers, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23113, 23117 (2004) (proposing \$91,000 base forfeiture amount for 13 devices), *consent decree ordered*, Order and Consent Decree, 21 FCC Rcd 5308 (2006) (“*Pilot*”); *Rocky Mountain Radar*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1334, 1339 (Enf. Bur., Spectrum Enf. Div. 2007), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd 15174 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a \$14,000 base forfeiture for marketing two models of radar jamming equipment in the United States); *Gibson Tech Ed., Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd at 14441 (proposing \$14,000 base forfeiture amount for two devices).

<sup>45</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; see also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (establishing intentional violation as an upward adjustment factor). See also, e.g., *Ramko Distributors Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7161, 7169 (2007) (upwardly adjusting a proposed forfeiture from \$119,000 to \$150,000 for marketing non-certified CB transceivers where an entity continued to market the devices after receiving a Citation that put it on notice that the marketing of this type of equipment is unlawful); *Pilot*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd at 23114 (upwardly adjusting a proposed forfeiture from 91,000 to \$125,000 for marketing non-certified CB transceivers where an entity continued to market the devices after receiving Citations that put it on notice that the marketing of this type of equipment was unlawful); *Rocky Mountain Radar*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd at 1339 (upwardly adjusting a proposed forfeiture of \$14,000 to \$25,000 for the marketing of illegal radar jamming devices after receiving a Citation that put Rocky Mountain on notice that the marketing of this type of equipment was unlawful, and after Rocky Mountain unsuccessfully challenged the issuance of the Citation before the Commission and the 10th Circuit Court of Appeals (citations omitted)).

<sup>46</sup> See *San Jose*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd at 2877 (upwardly adjusting a proposed forfeiture for the marketing of four models of GPS re-radiator kits because, *inter alia*, the devices potentially interfere with and jeopardize critical authorized safety-of-life operations); *Pilot*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd at 23117 (upwardly adjusting a proposed forfeiture based on a finding that the marketing and distribution of unauthorized radio transmitters, *inter alia*, potentially interferes with transmitters and other devices authorized to operate in such frequency ranges); *Callais*, Forfeiture Order, 17 FCC Rcd at 22630-32 (upwardly adjusting a forfeiture based on a finding that a cable system's signal leakage violations increased the likelihood of interference with aeronautical frequencies and potentially jeopardized air safety); *Centel Cellular of North Carolina Limited Partnership*, Notice of Apparent Liability for Forfeiture, 10 FCC Rcd 915 (1994), *modified on other grounds*, Memorandum Opinion and Order, 11 FCC Rcd 10800, 10804-05 (1996) (upwardly adjusting a forfeiture based on a finding that a wireless carrier constructed a tower that directly penetrated an air safety zone and interfered with airline flight paths, threatening and potentially jeopardizing air safety).

and the fact that the two models are not capable of being authorized,<sup>47</sup> we conclude that a significant upward adjustment is warranted. Accordingly, we upwardly adjust the base forfeiture of \$14,000 by \$11,000, and conclude that Phonejammer is apparently liable for an aggregate forfeiture of \$25,000 for its marketing of phone jammers in the United States in apparent willful and repeated violation of the requirements set forth in Section 302(b) of the Act and Section 2.803 of the Rules.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>48</sup> and Section 1.80 of the Rules,<sup>49</sup> and the authority delegated by Sections 0.111 and 0.311 of the Rules,<sup>50</sup> Phonejammer.com is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for its willful and repeated violation of Section 302(b) of the Act and Section 2.803 of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Phonejammer.com **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Phonejammer.com will also send electronic notification to Ricardo Durham at Ricardo.Durham@fcc.gov and to Nissa Laughner at Nissa.Laughner@fcc.gov on the date said payment is made.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. The statement should also be e-mailed to Ricardo Durham at Ricardo.Durham@fcc.gov and to Nissa Laughner at Nissa.Laughner@fcc.gov.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-

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<sup>47</sup> See *San Jose*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd at 2877 (upwardly adjusting a proposed base forfeiture because, *inter alia*, the GPS re-radiator kits marketed by an entity could not be authorized).

<sup>48</sup> 47 U.S.C. § 503(b).

<sup>49</sup> 47 C.F.R. § 1.80.

<sup>50</sup> 47 C.F.R. §§ 0.111; 0.311.

year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Phonejammer.com, via Fax at 44700 596 8880, and to Counsel for Phonejammer, Harbottle & Lewis, LLP, Hanover House, 14 Hanover Square, London W1S 1HP.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau